



August 13, 2010

Timothy J. Devlin, Executive Director
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: [FCC CG Docket No. 10-51; FCC 1—111]
Structure and Practice of the Video Relay Service Program

Dear Mr. Devlin:

The Florida Coordinating Council for the Deaf and Hard of Hearing (FCCDHH) was established by Florida Statute 413.217 in 2004. The mission of the Council is to “provide a forum for public input and outreach resulting in technical assistance, advocacy, education, and improved communication access among public and private entities to meet the needs of deaf, hard of hearing, late-deafened and deaf-blind persons.” Considering that Florida is home to nearly 3 million residents affected by hearing loss, the FCCDHH represents a population that constitutes nearly 1/6th of all Florida citizens. (FCCDHH 2009 Report to the Governor, Legislature, and Supreme Court of the State of Florida.) The FCCDHH is often called upon to provide information, and to promote awareness of the communication needs that are specific to the population of citizens with serve. We hope that this letter will serve both purposes.

Upon review and in keeping with our mission, the FCCDHH disagrees strongly with the recommendations recently drafted by the Florida Public Service Commission (FPSC) to the Federal Communications Commission (FCC) regarding its Notice of Inquiry about Video Relay Service (VRS). We take particular exception to the first (#1) FPSC draft statement that “Video Relay Service (VRS) goes beyond the functional equivalent of telecommunication services required by Title IV of the Americans with Disabilities Act (ADA) ...”. (Please refer to FPSC Document dated August 9, 2010, and addressed to Timothy J. Devlin, Executive Director, FPSC. See attached.)

The Americans with Disabilities Act (ADA) established requirements for the provision and availability of telecommunications relay services (Title IV of the ADA). According to Title 47, Chapter 4, Section 225 (3), telecommunications relay services are defined as “services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio.” The goal regarding availability of such services (ADA,

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Section 225, (3)(b)(1)) was “*to make available to all individuals in the United States a rapid efficient nationwide communication service ... and ... ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States*” (italics FCCDHH).

Hearing persons are no longer limited to communication via telephone as they are currently able to communicate with one another using a variety of other modalities including broadband/Internet services. The functional equivalency referred to in ADA Title IV was based on the technology (wire and radio) that existed at the time of its writing. Alternate phone technology such as IP-Enabled services (including VRS and other Internet-based services) did not yet exist. Since voice-over-Internet calls are available to those with hearing, such calls should be made accessible to people with hearing loss.

Video Relay Service allows persons with a hearing or speech disability to communicate in both personal and professional situations using American Sign Language in near real time. American Sign Language, the language of choice for many people with profound hearing loss, is a conceptual and visual language with its own syntax and grammar system which is quite different from spoken English. Although captioned speech was the best of the limited options that existed for interpersonal phone communication by ASL users at one time, that is no longer the case. Additionally, currently available text captioning accommodations have significant delays, are not close to real-time, and are not functionally equivalent. Since the development of Web-based video-technologies, it is indisputable that text-based relay no longer provides the best choice for true functional equivalence.

The National Association of the Deaf (NAD) addressed the issue of functional equivalence when it filed the following statement with the FCC on March 14, 2010 in response to questions about funding for VRS (www.nad.org):

What is functional equivalency? Twenty years ago, the Americans with Disabilities Act (ADA) required nationwide relay services that are “functionally equivalent” to telephone services. The U.S. Congress intended to make telephone communication services accessible to our community, using the very best technologies available. Functional equivalency is not frozen in time. Functional equivalency requires reassessment as new technology is developed and new services become available. For us, every action proposed or taken by the FCC and relay service providers should be assessed against the standard of functional equivalency. In other words, everything the FCC and relay service providers do must move us closer to functionally equivalent telephone services.

While we have made many strides, we still have not achieved true and full functional equivalency. For example, hearing people today can make phone calls from almost anyplace with their cell phones. The deaf and hard of hearing community continues to struggle to achieve this goal because our equipment is often stuck at one location or the connection is not strong enough to carry our call. Until we can make a call from almost anyplace, we will not have achieved true and full functional equivalency.

In today’s world, technological advances are achieved rapidly and often create an increased capability for interpersonal communication. As a consequence, functional equivalence needs to be reassessed for people with hearing loss as often as technology and methodology change for the non-disabled population.



As a matter of fact, the utilization of new technology is encouraged by ADA statute (Title IV, (d) (2)), "The Commission shall *ensure that regulations prescribed to implement this section encourage, consistent with section 157(a) of this title, the use of existing technology and do not discourage or impair the development of improved technology*" (italics FCCDHH). Clearly, the ADA encourages the adoption and use of current and improved technology.

The use of VRS provides seamless communication between two parties using contemporary telecommunication methods (Internet protocols) without consideration as to whether the user has hearing or not. It is undeniably functionally equivalent with regard to communication access and, although VRS is operated through IP-Enabled services, we would contend that VRS should be considered a true telecommunications service in today's world.

We strongly encourage the FPSC (and FCC) to take this into consideration:

- (1) When evaluating jurisdiction (#4);
- (2) When addressing both inter-state and intra-state funding (#2, #3, #5); and
- (3) When considering whom may provide such services (#6).

In closing, we would like to request that the Florida Public Service Commission consult with us when considering issues relevant to Florida citizens who are deaf, hard of hearing, late-deafened or deaf-blind. The FCCDHH believes that working proactively and collaboratively with the FPSC would benefit both of our organizations as well as the millions of Floridians impacted by hearing loss.

Thank you, in advance, for your consideration.

Sincerely,

Sherilyn M. Adler, Ph.D.
Chair, Florida Coordinating Council for the Deaf and Hard of Hearing
Attachments: Referenced links; FPSC Document dated August 9, 2010

cc: Federal Communications Commission (FCC)
Governor's Commission on Disabilities

SMA/mgt

State of Florida



DRAFT
RESPONSE

Public Service Commission

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DATE: August 9, 2010

TO: Timothy J. Devlin, Executive Director

FROM: Robert J. Casey, Public Utilities Supervisor, Division of Regulatory Analysis
Richard A. Moses, Chief of Service Quality, Division of Service, Safety & Consumer Assistance
Cindy B. Miller, Senior Attorney, Office of the General Counsel

RE: Draft Comments in Response to the Federal Communications Commission Notice of Inquiry regarding Video Relay Service

CRITICAL INFORMATION: Please place on the August 17, 2010 Internal Affairs. Comments are due August 18, 2010. **COMMISSION APPROVAL OF COMMENTS IS SOUGHT.**

Chapter 427, Florida Statutes, established the Telecommunications Access System Act of 1991 (TASA). Pursuant to TASA, the Commission is responsible for establishing, implementing, promoting, and overseeing the administration of a statewide telecommunications access system to provide access to telecommunications relay services by people who are hearing or speech impaired and those who communicate with them. According to the Florida Coordinating Council for the Deaf and Hard of Hearing's 2009 Report to the Governor, Legislature, and Supreme Court of the State of Florida, nearly three million Floridians, or approximately one sixth of all Florida's citizens, are affected by hearing loss.

On June 28, 2010, the Federal Communications Commission (FCC) released a Notice of Inquiry (FCC 10-111) regarding Video Relay Service (VRS). VRS¹ allows persons with hearing or speech disabilities to use American Sign Language over the Internet to communicate in near real time. In this Notice, the FCC seeks comment to make the VRS program work better for those who could benefit from it and those who pay into it.

Among other issues, the FCC is seeking comments on whether states should be required to pay the intrastate costs of VRS. At this time, Florida does not pay for any VRS costs. All VRS costs are paid out of the interstate Telecommunications Relay Service Fund. If the FCC requires states to absorb the intrastate costs of VRS, the costs for the Florida Relay program may increase by an estimated \$32 million per year. A Florida statutory \$0.25 cap on the amount of

¹ VRS replaces the TTY-to-TTY link between Telecommunications relay service user and a communications assistant (CA) with a video-to-video link, allowing the person who uses American Sign Language (ASL) to communicate with another individual through a CA who can communicate in sign language. The CA interprets the call by voicing what the ASL user signs to the hearing individual, and signing back the hearing individual's responses.

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the Telecommunications Relay Service (TRS) surcharge on local exchange company access lines may have to be increased, and if competitive bidding of VRS contracts is required, the Florida statute providing for a single provider of TRS service in Florida may have to be changed. Comments are due August 18, 2010. **COMMISSION APPROVAL OF COMMENTS IS SOUGHT.**

The Draft Comments encourage the FCC to consider the following:

1. VRS goes well beyond the functional equivalent of telecommunication services required by Title IV of the Americans with Disabilities Act (ADA) and should not be a mandated service of TRS;
2. If VRS becomes a mandated service of TRS, it should continue to be funded through the Interstate TRS Fund;
3. If state funding of intrastate VRS is mandated, it should not occur until the FCC resolves the fraudulent use of VRS;
4. The jurisdictional separation issues in Docket No. WC 04-36 (IP-Enabled Services) must be resolved before determining the jurisdiction and associated funding of VRS;
5. If a decision is made to require states to assume intrastate VRS costs, the FCC must allow time for states to make legislative changes; and,
6. Mandating VRS as part of the TRS program may eliminate competition for these services in Florida since, by statute, Florida can have only one relay service provider.

RJC

Attachment

cc: Charles Hill